



DRINKING WATER STATE REVOLVING FUND LOAN PROGRAM GUIDANCE

SECTION 1: PURPOSE

Pursuant to IC 4-4-11-15 (2), the following Guidance shall be used to implement the Drinking Water State Revolving Fund (SRF) Loan Program (Program) established by IC 13-18-21. The purpose of the Program is to:

- (1) Provide funding for loans and other financial assistance to or for the benefit of Participants, including forgiveness of principal if allowed under federal law.
- (2) Provide funding for Participants in Indiana to plan, design, construct, renovate, improve, or expand public water systems (PWS) that will facilitate compliance with national primary drinking water regulations applicable to PWS under the federal Safe Drinking Water Act or otherwise significantly further the health protection objectives of the federal Safe Drinking Water Act and other activities necessary or convenient to complete these tasks.
- (3) Pay the cost of administering the Drinking Water SRF and the Program, as provided in the federal Safe Drinking Water Act.
- (4) Conduct any other activity permitted by the Safe Drinking Water Act.

SECTION 2: DEFINITIONS

The following definitions apply throughout this Guidance document:

Authority means the Indiana Finance Authority created under IC 4-4-11, which administers the Drinking Water State Revolving Fund Loan Program.

Authorized Representative means a person who has been designated by the governing Board of a Participant to sign documents on behalf of that Board.

Board means the governing body of the Participant seeking Financial Assistance.

Bond is the debt instrument which evidences the long term financing undertaken by a Participant in accordance with Indiana statutes for incurring debt.

Categorically Excluded means categorically excluded from substantive environmental review, which applies to a Proposed Project that has no physical impact, such as a planning project or to a Proposed Project with minimal environmental impact as defined in the State Environmental Review Process (SERP) document.

CE means a Categorical Exclusion which is the environmental document issued when a Proposed Project has no physical impact or has minimal environmental impact as defined by the SERP.

Drinking Water SRF or DWSRF means the Drinking Water State Revolving Fund as authorized by the Safe Drinking Water Act, 42 U.S.C. 1452 et seq., and IC 13-18-21.

Due Diligence means a process that provides financial disclosures to the Program, as well as economic matters related to the Participant and its ability to repay the Loan.

EA means an environmental assessment that is a document prepared pursuant to the State Environmental Review Process (SERP) upon completion of the Program's review of a Preliminary Engineering Report or any other document describing the Proposed Project and its environmental impacts.

EIS means an environmental impact statement that is a document prepared for a Proposed Project if it is determined by the Program that the construction or operation, or both, of a Proposed Project will result in significant environmental impacts. The purpose, content, and format of an EIS will be in accordance with the SERP.

Financial Assistance means the types of financial assistance authorized by the Safe Drinking Water Act.

Financial Assistance Agreement means an agreement approved under IC 4-13-2-14.1 that contains the covenants between the Participant and the Authority concerning Financial Assistance from the Drinking Water SRF.

Financial Assistance Closing means the occasion in which a Participant tenders its note, bond, guaranty agreement, or credit enhancement agreement to the Authority, and the Authority provides a portion, or all, of the Drinking Water SRF Financial Assistance to the Participant.

FNSI means a finding of no significant impact that is a finding of the Program, issued with an EA, that the construction and operation of a Proposed Project or the improvements thereto will not significantly impact the environment.

IUP means an intended use plan identifying the intended uses of the Drinking Water SRF and describing how those uses support the goals of the Program.

Loan means purchasing the notes or bonds of a Participant to finance a Proposed Project or Refinancing an existing debt obligation incurred after July 1, 1993.

Operation and Maintenance includes the activities required to ensure the continuing dependable and economic function of the PWS, including maintaining compliance with primary and secondary drinking water standards, as follows:

- (1) Operation is the control and management of the unit processes and equipment that make up the PWS. This includes financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning, and operating activities.
- (2) Maintenance is the preservation of the functional integrity and efficiency of equipment and structures by implementing systems of preventive and corrective maintenance.

Participant means the following:

- (1) Political Subdivision as defined in IC 36-1-2.
- (2) Regional water, sewage, or solid waste district organized under IC 13-26 or IC 13-3-2, before its repeal July 1, 1996.
- (3) Local public improvement bond bank organized under IC 5-1.4.
- (4) Qualified entity described in IC 5-1.5-1-8(4) that is a public water utility described in IC 8-1-2-125.
- (5) Conservancy district established for the purpose set forth in IC 14-33-1-1(a)(4).
- (6) Any other owner of a PWS that is authorized by the Safe Drinking Water Act to borrow from the Drinking Water SRF

PPL means a project priority list which is generated through the Program and updated annually and may be amended from time to time. It ranks, in descending priority of need, Proposed Projects for which Participants have requested financial assistance from the Drinking Water SRF for eligible expenses.

PER means the Preliminary Engineering Report which are the documents submitted by the Participant that provide the information necessary for the Program to determine the technical, economic, and environmental adequacy of the Proposed Project.

Program means the Drinking Water State Revolving Fund Loan Program as established by IC 13-18-21.

Proposed Project means the activities or tasks a Participant identifies in its PER or any other document required by the Program related to the planning, design, and or construction of a Proposed Project for which the Participant may commit and expend funds.

PWS means a public water system as described in 327 IAC 8-2-1(49).

Refinancing means the refinancing of a Participant's issued and outstanding bond, note or other debt obligation as permitted by the Safe Drinking Water Act through the Drinking Water SRF under criteria used by the Authority from time to time.

ROD means a record of decision issued by the Program upon the completion of an EIS which includes a determination of whether to proceed with a Proposed Project.

Safe Drinking Water Act means the federal act as amended by the Safe Drinking Water Act Amendments of 1986, the Lead Contamination Control Act of 1988, and the Safe Drinking Water Act Amendments of 1996.

SERP means the State Environmental Review Process which is a National Environmental Policy Act-compliant environmental review approved by the U.S. Environmental Protection Agency.

Study Area means the geographical area comprising a Participant's boundaries which also includes the location of the Proposed Project to be financed or refinanced by such Participant through the Drinking Water SRF.

Substantial Completion Date of Construction means the date determined by the Participant and provided to the Program when all but minor components of a Proposed Project have been built, all equipment is operational, and the Proposed Project is capable of functioning as designed.

Substantive Environmental Impact means a significant adverse environmental impact resulting directly or indirectly from the construction, upgrade, expansion or operation of a Proposed Project.

SECTION 3: USES OF THE DRINKING WATER SRF

The Drinking Water SRF will be used to do the following:

- (1) Provide Financial Assistance for Proposed Project planning, design, and/or construction or for other activities that are permitted by the Safe Drinking Water Act.
- (2) Refinance a Participant's outstanding indebtedness as determined to be eligible for repurchase by the Authority under the Safe Drinking Water Act.
- (3) Pay reasonable direct and indirect program administration costs.
- (4) Provide funds for set aside accounts as permitted by the Safe Drinking Water Act.

SECTION 4: CRITERIA FOR DETERMINING FINANCIAL ASSISTANCE ELIGIBILITY

4-1 Project Priority List

A Proposed Project must be on the PPL to be awarded Financial Assistance from the Authority.

4-2 Intended Use Plan

- (1) The Program will prepare annually an IUP and PPL pursuant to the Safe Drinking Water Act, to be effective on the first day of the State's fiscal year.
- (2) The following documents will be included as appendices of the IUP and are subject to modification in accordance with this section:
 - (a) The PPL.
 - (b) A document describing the project ranking process.
 - (c) A list of any other types of projects permitted by the Safe Drinking Water Act.
 - (d) A list of Refinancings which may, but need not be, treated in the PPL as part of a project otherwise listed on the PPL.
- (3) The Program will adopt an IUP after public notice of the plan and after responding to any comments received as determined by Program staff. The Program may amend the IUP to add eligible projects, and change or amend Proposed Projects as necessary from time to time.
- (4) Placement on the PPL will be based on the following criteria:
 - (a) The Proposed Project must be consistent with the uses of the Drinking Water SRF as identified in the Safe Drinking Water Act and IC 13-18-21-3.
 - (b) A Participant must submit general project information on an application form provided by the Program that is signed by the Participant's Authorized Representative.

SECTION 5: PROGRAM STANDARDS

Loans and other available Drinking Water SRF financial assistance for Proposed Projects will be made only to a Participant that meets all of the following criteria:

- (1) Owns, operates, and maintains, or causes to be operated and maintained, a PWS for its useful life.
- (2) Demonstrates financial, managerial, technical, and legal capability to meet the terms of the Financial Assistance Agreement and to operate and maintain the PWS for its useful life.
- (3) Agrees to submit an annual operating budget for the Authority's approval and periodically adjust fees, charges, taxes, special assessments, and revenues available to the Participant, if any, in order to assure receipt of sufficient revenue annually to comply with all requirements of the Financial Assistance Loan Agreement.
- (4) Agrees to:
 - (a) maintain financial records in accordance with generally accepted government accounting principles for utilities; and
 - (b) provide a copy of audits of the PWS financial records as conducted by the state board of accounts or other certified independent auditor during the term of its Financial Assistance Agreement.
- (5) Agrees to allow inspection by the Authority of the financial records related to the PWS during the term of the Financial Assistance Agreement.
- (6) Meets all other Program requirements.

SECTION 6: DUE DILIGENCE PROCESS

The due diligence process will include the following tasks:

- (1) The Participant will submit a completed Due Diligence form issued or authorized by the Program with the required documentation.
- (2) The Program staff will review or cause to be reviewed the due diligence form and documentation.

SECTION 7: PRELIMINARY ENGINEERING REPORT

7-1 Purpose

The purpose of the PER is to provide the information necessary for the Program to determine the technical, economic, and environmental adequacy of the Proposed Project. The PER must be approved by the Program prior to award of Financial Assistance for a Proposed Project, unless it is a refinancing. PER information and data requirements are dependant on the type of Proposed Project and shall be determined by Program staff.

The Program may request additional information from a Participant that it deems necessary to adequately assess the technical, economic, and environmental adequacy of the Proposed Project.

7-2 Development of Feasible Alternatives

The PER will contain a section identifying and evaluating the range of feasible alternatives that were evaluated during the planning process, including that of taking no action. The rationale for the selected alternative along with the reasons for rejecting the others must be included.

7-3 Environmental Information

The PER consists of the following environmental information:

- (1) A comparison of the potential environmental impacts among feasible alternatives, including that of doing nothing.
- (2) An assessment of the cumulative environmental impacts of the feasible alternatives within each of the following categories:
 - (a) Soils and prime farmland.
 - (b) Air quality.
 - (c) Ground water, drinking water, and sole source aquifers.
 - (d) Floodplains, wetlands, waterways, and other surface waters.
 - (e) Plants and animals.
 - (f) Historic, architectural, and archaeological sites.
 - (g) Natural national landmarks.
 - (h) Coastal zones.
- (3) The environmental information document will include an evaluation of the environmental impacts of taking no action to modify, improve, or expand an existing PWS.
- (4) Specific mitigation measures will be listed, as necessary, which will eliminate, minimize, or compensate for the environmental impacts enumerated above.
- (5) If the construction of an approved project is initiated five or more years after the date of approval of a PER, an additional environmental information document will be required unless it is determined by the SRF Program that there have been no substantial changes in the environmental impacts of the project. A reaffirmation of the FNSEI will be public noticed according to the SERP.
- (6) If a Proposed Project is to be completed in several distinct phases, the environmental information associated with the first phase must consider the cumulative impacts of the entire proposed system, including all succeeding phases. As succeeding phases are constructed, no additional environmental information will be required if there have been no significant changes to the original PER.
- (7) If a Project is to be constructed in an area which had prior environmental vetting for a previous proposed Project approved by the Program, the environmental information submitted with the previous Proposed Project will be evaluated by the Program to determine if its scope and content encompassed the environmental impacts associated with the current project. Based on this evaluation, the participant will only be required to submit additional information if the Program deems it necessary to complete the environmental review for the current Proposed Project.

7-4 Public Participation

The PER will include the following:

- (1) A record of the public hearing.
- (2) A copy of the publisher's affidavit from the newspaper with the public hearing notice.

Copies of all written comments submitted by the public during the PER process will be routed through the Program for comment by the Participant.

7-5 Public hearings

At least one public hearing will be held by the Participant within the Proposed Project's Study Area for the purpose of discussing the Proposed Project. A copy of the PER and/or documents reasonably describing a Proposed Project will be available to all attendees at the hearing.

Requirements for the hearing will include the following:

- (1) The public hearing will be publicized in at least one newspaper of general circulation in the Study Area a minimum of ten days prior to the date of the hearing.
- (2) The PER will be available for public review for a minimum of ten days prior to the date of the public hearing.
- (3) Written comments will be accepted during the public hearing and for a period of five days following the public hearing according to SRF guidelines.
- (4) A sign up sheet will be available at the public hearing for all individuals interested in receiving the CE/FNSEI, EA/FNSEI, or EIS/ROD or environmental documents.

SECTION 8: ENVIRONMENTAL IMPACT ASSESSMENT

8-1 Purpose

The purpose of these guidelines is to ensure that the environmental impacts of all Proposed Projects funded by the Drinking Water SRF be evaluated adequately prior to award of Financial Assistance and to assure that the consideration of public comments is an integral component of the environmental impact assessment process.

8-2 Categorical Exclusions

The following classes of projects may be Categorically Excluded from substantive environmental review:

- (1) Minor addition, rehabilitation, improvement, or expansion of any existing PWS's treatment facilities that will disturb only previously disturbed land.
- (2) Rehabilitation of a PWS's distribution system that will disturb only previously disturbed land.

A CE may be rescinded by the Program if it is determined that sufficient information exists to suggest that substantive environmental impacts may occur as a result of the construction or operation, or both, of any PWS construction project that received a CE.

All decisions to Categorically Exclude a Proposed Project from substantive environmental review or to rescind a previously granted CE, will be public noticed in one newspaper of general circulation within the study area.

8-3 Environmental Assessment

The purpose of an EA is to document for public evaluation and comment the potential environmental impacts of the Proposed Project and describe the feasible PWS alternatives. The EA will be provided as an attachment to the FNSI document and will be prepared according to the SERP.

8-4 Finding of No Significant Impact

The purpose of issuing a FNSI is to notify the public that based upon the Program's evaluation of all pertinent information submitted in the PER and information submitted by State and federal agencies, the construction and operation of PWS construction projects will result in no significant adverse environmental impact.

- (a) The FNSI and attached EA will be issued for public comments for thirty days. If significant public comments are received during the public comment period, the FNSI will be reevaluated and a new FNSI, if appropriate, issued for public comments for thirty days.
- (b) A final decision to proceed, or not to proceed, with the proposed project will be issued by the Program after all public comments have been evaluated

8-5 Environmental Impact Statement

The criteria for initiating an EIS are established under 40 CFR 6.108. A Record of Decision will be issued by the Program upon completion of an EIS that will include a determination of whether to proceed with the Proposed Project. The ROD will contain specific mitigation measures that will minimize, eliminate, or compensate for the environmental impacts of the construction or operation, or both, of the Proposed Project. The ROD will be issued for public comments for thirty days and will be considered final in the absence of significant public comments. If significant public comments are received during the comment period, the ROD will be reevaluated and a new ROD, if appropriate, will be issued for public comments for thirty days.

SECTION 9: WATER RATE ORDINANCE; INTERLOCAL AGREEMENT

9-1 Approval rate study; water rate ordinance

- (a) Every Participant will obtain the Authority's approval of its water system rates and charges as part of the financial due diligence process.
- (b) Each Participant will establish rates and charges at a level adequate to produce and maintain sufficient revenue to properly operate and maintain the treatment works, and to repay all debt obligations of the treatment works.

9-2 Interlocal Agreement

If the Proposed Project will serve two or more Public Water Systems, the Participant will submit an interlocal service agreement, contract, or other legally binding instrument necessary for the financing, construction, operation, and maintenance of the proposed public water system project for approval by the Authority's staff. If the Participant is a multi-county infrastructure Authority under IC 36-7-23, the Authority may require similar documentation and assurances.

SECTION 10: PROCUREMENT

This Section will not apply to a Refinancing.

10-1 Professional Services

Participants conducting procurement for the uses authorized by the Drinking Water SRF for professional services will proceed pursuant to IC 5-16-11.1.

Participants conducting procurement for the uses authorized by the Drinking Water SRF for any activity other than professional services will proceed pursuant to IC 36-1-12.

10-2 Small, Minority, and Women's Business Enterprises

The Participant will take all necessary affirmative steps to ensure that small, minority, and women's business enterprises are used when possible. Affirmative steps will include taking the following actions:

- (1) Placing qualified enterprises on solicitation lists.
- (2) Ensuring that these enterprises are solicited whenever they are potential sources.
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by these enterprises.
- (4) Establishing delivery schedules, where the requirement permits, that encourage participation by these enterprises.
- (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Authority of the Indiana Economic Development Commission.
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

SECTION 11: CONSTRUCTION

This Section does not apply to a Refinancing.

11-1 Construction Permit

The Participant must obtain a construction permit from the Department of Environmental Management (IDEM) in accordance with State rules or other permitting authority if applicable, in conjunction with the approved PER prior to contract award approval. The Participant must receive authorization from the Program prior to initiating procurement for construction.

11-2 Acquisition of Land, Easements, and Existing Facilities

The Participant is responsible for acquisition of land, easements, and any existing facilities necessary to construct, operate, and maintain the Proposed Project. Prior to the approval of contract award by the Program, the Participant will provide evidence that it has, or will have by a mutually agreeable date, the required property rights. All acquisitions of property by exercise of power of eminent domain will comply with the procedure in IC 32-11 and Section 1452(a)(2) of the Safe Drinking Water Act.

11-3 Bid Tabulations

Certified bid tabulations and recommendations of award will be submitted to the Program for review and approval prior to construction contract award.

11-4 Contract Information submittal

Following the Program's approval of the proposed award, each Participant will provide copies of the following to the Program:

- (1) Executed contracts.
- (2) Notices to contractors to proceed.
- (3) Bid bonds.
- (4) Performance and payment bonds.
- (5) Construction schedules.

11-5 Construction Wage Rates

Standard wage rates shall be paid for each Proposed Project as is generally prescribed for Indiana construction projects funded with public funds.

11-6 Change Orders

The Participant will submit copies of each change order to the Program for approval. Change orders that (1) significantly change the scope or design of the Proposed Project; or (2) increase the amount of financing needed for the Proposed Project require the prior approval of the Program before the work is authorized by the Participant. If the change order will result in the expenditure of more Drinking Water SRF funds than the current amount of Financial Assistance approved by the Authority, an amendment increasing the amount of Financial Assistance must be executed prior to the implementation of the changes. Any additional Financial Assistance will comply with existing law as to the borrowing power of the Participant.

11-7 Inspections

The inspections will proceed as follows:

- (1) During the construction of the Proposed Project, the Participant will provide frequent inspections by qualified inspectors in sufficient numbers to ensure that the construction complies with the Program's approved PER and the IDEM issued construction permit and the terms and conditions of the contract.
- (2) The inspectors will maintain logs, written in ink, with entries sufficient to establish the amount and quality of work completed by the contractor including weather conditions and problems encountered.
- (3) The Program will conduct construction inspections to determine compliance with the Program-approved PER and/or construction permit and the Financial Assistance Agreement. Inspections performed by the Program are not made to replace the Participant's responsibility to properly monitor the construction of its project, but are made solely to protect the Authority's financial interest in the Proposed Project.
- (4) The Participant will conduct a pre-final inspection making a punch list of incomplete and unacceptable work to be corrected before final inspection.
- (5) The Participant will notify the Program after the pre-final inspection has been done and all punch list items have been corrected, or agreed to be corrected, to set up a final inspection to be made by the Program to determine the date of substantial completion.

11-8 As-Built Plans

After completion of the Proposed Project, the Participant will obtain as-built plans for the Proposed Project from its engineer and provide these to the Program. These may be submitted in electronic format.

SECTION 12: DISBURSEMENT OF LOAN PROCEEDS

The Financial Assistance will be disbursed as follows:

- (1) The Program will review and certify the Drinking Water SRF loan share of the appropriate costs incurred for the project. These costs will be documented as requested by the Program. The Authority may pay these costs in accordance with the Financial Assistance Agreement.
- (2) The Participant will approve all project costs for payment and provide such approval to the Program.
- (3) Loan proceeds disbursed to or on behalf of the Participant will be used only for authorized purposes. Funds will not be applied to pay costs associated with a contract change order that authorized a significant change in project scope or design, or both, prior to concurrence by the Program and the Authority.
- (4) The Program may at any time review and audit requests for loan disbursements and make adjustments for circumstances including, but not limited to, the following:
 - (a) Mathematical errors.
 - (b) Items not bought or built.
 - (c) Unacceptable construction.

- (5) All files and records pertaining to the Proposed Project will be maintained by the Participant and made accessible to the Program upon request. These files and records will be retained by the Participant for at least six years after initiation of operation as determined by the Program. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six-year period, the records will be retained until completion of the action and resolution of all issues that arise from it or until the end of the regular six- year period, whichever is later.

SECTION 13: RESERVATION OF RIGHTS

The following rights are reserved:

- (1) Nothing in this Guidance document prohibits a Participant from requiring more assurances, guarantees, or indemnity, or other contractual requirements from any party performing work on the project.
- (2) Nothing in this Guidance document affects the Program's right under existing rules to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a Participant that fails to carry out its obligations under this Guidance document.
- (3) Review or approval of any document by or for the Program does not relieve the Participant of its responsibility to properly plan, design, build, and effectively operate and maintain the PWS as required by federal and state statutes, rules, regulations, permits, and best management practice. Neither the Program nor the Authority is responsible for increased costs resulting from defects in the plans, design drawings, specifications, inspections, construction, or other sub-agreement documents related to the project.